IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 13801 of 2005

Between:

1 Syed Dasthagiri Basha Quadri, S/o.S.S.Quadri,
R/o.Gajwel, Medak district.
2 B.Bikshapathi, S/o.B.Ramaiah,
R/o.Gajwel, Medak district.
3 Mohd.Alimuddin, S/o.Maqdoom Mohiddin,
R/o.Gajwel. Medak district.

..... PETITIONERS

AND

1 The District Cooperative ventral Bank Ltd., Medak , Rep by its General Manager.
2 The Sale Officer, The District Cooperative Central Bank Ltd.,
Sanga Reddy Branch, Medak district.
3 Y.Janardhana Reddy, S/o.Bhoomi Reddy,
H.No.3-85 and 3-86, Gajwel, Medak district.
4 Y.Bhoomi Reddy, S/o.Laxma Reddy,
H.No.3-85 and 3-86, Gajwel, Medak district.
5 Y.Narsa Reddy, S/o.Bhoomi Reddy,
H.No.3-85 and 3-86, Gajwel, Medak district.
6 Y.Indra Reddy, S/o.Bhoomi Reddy,
H.No.3-85 and 3-86, Gajwel, Medak district.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ or direction declaring the order of the 2nd respondent passed in order dt.25-5-2005 as illegal, arbitrary and consequently direct the 2nd respondent not to auction the properties purchased by the petitioners and pass such other order or further orders.

Counsel for the Petitioners: MR.O.MANOHER REDDY
Counsel for the Respondents: SMT.BOBBA VIJAYALAKSHMI

The Court, at the stage of admission, made the following :

ORAL ORDER

The petitioners seek a declaration that the order of the 2nd respondent-The Sale Officer, The District Cooperative Central Bank, Sangareddy Branch, Medak District dated 25-05-2005 is illegal and invalid and for a direction to the said respondent not to auction the properties purchased by the petitioners.

The relevant facts are that agricultural lands in an extent of Ac.8.15 guntas in Sy.No.819/A to 827/A initially belonged to the respondent Nos.3 to 6. The petitioners purchased several extents of this property under a registered sale deeds but without proper enquiries as to whether there was any registered encumbrance on the properties. The 2nd respondent issued a notice proposing to auction the property of respondent Nos.3 to 6 as they had obtained loan from the 1st respondent-The District Cooperative Central Bank, Medak and defaulted. The petitioners then made a representation to the 2nd respondent they had purchased the said property and requested the 2nd respondent to bring the other properties belonging to the respondent Nos.3 to 6 which have also been mortgaged to the 2nd respondent, to sale. As the 2nd respondent was not responding to this representation the petitioners filed Writ Petition No.6392 of 2005. This Court by the order dated 28-03-2005 disposed of the writ petition at the stage of admission directing the respondent-Bank to consider the application-representation of the petitioners and proceed in accordance with law. The petitioners were also given liberty to file a fresh application-representation.

The petitioners filed a representation to which the 2nd respondent responded by the impugned order stating that the lands in an extent of Ac.7.27 cents in Sy.No.819/A to 827/A of Gajwel village have been mortgaged in favour of the Primary Agricultural Co-operative Society, Gajwel in 1996 under a registered documents and therefore the petitioners' application-representation does not deserve consideration. Aggrieved thereby the petitioners have filed the present writ petition.

The singular contention urged on behalf of the petitioners is that as per Section.56 of the Transfer of Property Act,1882 (for short "the Act") the marshalling of the mortgaged properties could be done and as the petitioners are *bonafide* purchasers of the property, the respondents should in all fairness and on application of the principles underlying Section.56 of the Act resort to sale of the other mortgaged properties first (other than those purchased by the petitioners) and on sale of such other properties if the amount realized is inadequate, only thereafter proceed to bring the properties purchased by the petitioners to sale. Support for this contention is placed on the decision of a learned Single Judge of this Court reported in ***Prathipati Subba Rao Vs. Union Bank of India*** (). The Court had held::

" In the context of Section 56, no perceptible or qualitative change of rights is evident, if the mortgage is by more individuals than one. The focal point of the provision is the purchaser of mortgaged property, and the object is to protect his interest, to the extent possible. It hardly makes any difference, whether the mortgage was made by one or several individuals. Further, there is no in compatibility in the situations, where the mortgagor is singular on the one hand and where they are many on the other hand. The requirements for application of the Section are:

a. more items of properties than one, are mortgaged,

b. One or some of the mortgaged properties are sold in favour of third party,

c. The purchaser insists that steps be taken against other mortgaged properties, before the one purchased by him, is proceeded against.

d. There does not exist any contract to the contrary.

In the ultimate analysis, it is only a matter of fixing priorities in the matter of sale of mortgaged properties. All the items of properties, mortgaged through a common deed, stand on the same footing, in the context of discharge of the liability. It is immaterial whether the mortgaged properties are held by the same individual, or many. It is not as if that by acceding the request of marshalling, the Court completely galvanizes the property, that was sold during subsistence of the mortgage.

The expression "but not so as to prejudice the rights of the mortgage" occurring in

Section 56 of the Transfer of Property Act, clearly indicates that incase the sale of other items of property is not going to satisfy the decree, the item that is kept aside as a measure of marshalling, is also be liable to be brought to sale. Therefore, it makes little difference whether the mortgaged properties are sold in one order of preference, or the other. While the order contemplated under Section 56 would protect the interests of the mortgagee, mortgagor and a subsequent purchaser, the other would defeat the rights of the subsequent purchaser, and in a given case, may promote collusion between a dishonest mortgagor and the un-reasonable mortgagee."

In view of the principles declared in the judgment supra, the contention of the petitioners is well taken. Accordingly the 2nd respondent is directed not to proceed with the sale of the properties purchased by the petitioners under registered sale deeds in the first instance. The 2nd respondent shall proceed to bring the other properties of the respondent Nos.3 to 6 which have been mortgaged with the PACS, Gajwel to sale and if after such sale and realization of the sale amounts the debt due to the PACS,Gajwel from the respondent Nos.3 to 6 is not wholly satisfied thereafter the 2nd respondent shall proceed to bring the properties purchased by the petitioners and which have been mortgaged by the respondent No3 to 6 in favour of the PACS, Gajwel to sale for realization of the short fall in the debt due to the society.

It is hereby recorded that the petitioners do not contend that the properties purchased by them are not liable to be sold, that these properties are liable to be sold in satisfaction of the decree is admitted.

With the above said directions, the writ petition is disposed of. In the circumstances, there shall be no order as to costs.

GODA RAGHURAM,J

6TH JULY 2005

*TSNR

To

1 The General Manager, District Cooperative ventral Bank Ltd., Medak ,
2 The Sale Officer, The District Cooperative Central Bank Ltd.,
Sanga Reddy Branch, Medak district.

3 Two C.D.Copies.